



Securities Act (Equity Warrant Issuers) Exemption Notice 2002

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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Notice

- 1 Title**
This notice is the Securities Act (Equity Warrant Issuers) Exemption Notice 2002.
- 2 Commencement**
This notice comes into force on 1 October 2002.
- 3 Expiry**
This notice expires on the close of 30 September 2007.
- 4 Interpretation**
- (1) In this notice, unless the context otherwise requires,—
- Act** means the Securities Act 1978
- audiovisual advertisement** means an advertisement that—

- (a) is distributed to any person by means of radio, television, or film; and
- (b) contains or refers to an offer of equity warrants to the public for subscription; and
- (c) specifies an address, telephone number, or website for the purpose of obtaining an investment statement relating to those equity warrants; and
- (d) complies with, or would but for this notice comply with, all applicable provisions of the Act and the Regulations

covered equity warrant means—

- (a) an equity warrant in accordance with which the warrant issuer has ensured that a number of underlying equity securities (being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrant) are held by a trustee throughout the period of the equity warrant and for the exclusive benefit of the warrant holder; or
- (b) an equity warrant that complies with the fully covered warrant requirements of the Australian Stock Exchange

equity warrant means a security offered to the public for subscription that—

- (a) confers on the warrant holder the right to acquire, and obliges the warrant issuer to deliver at the option of the warrant holder, equity securities that, at the time of the offer, belong to a class of securities that is quoted on a recognised stock exchange; and
- (b) is issued by a person who—
 - (i) is either a party to a listing agreement with a recognised stock exchange or approved to be a warrant issuer, for the purpose of issuing fully covered warrants, by the Australian Stock Exchange; and
 - (ii) is not a related company of the issuer of the underlying equity security; and
- (c) either is quoted on a recognised stock exchange or in respect of which an application has been made for quotation on a recognised stock exchange and, at the time of the offer, the issuer has complied with all the requirements of the recognised stock exchange relating to the

application with which it is required to comply at that time

overseas offer document has the meaning set out in clause 5
recognised stock exchange means a stock exchange specified in Schedule 1

Regulations means the Securities Regulations 1983

related company has the same meaning as in section 2(3) of the Companies Act 1993

specified overseas jurisdiction means a jurisdiction specified in Schedule 2

trustee means—

- (a) a trustee corporation or a person approved to act as a trustee under section 48 of the Act; or
- (b) in respect of an overseas offer document, a person empowered by the law of a specified overseas jurisdiction to carry on business as a trustee in respect of offers of securities to members of the public

underlying equity securities, in relation to an equity warrant offered to the public for subscription, means equity securities that, at the time of the offer, belong to a class of securities that is quoted on a recognised stock exchange and in respect of which the warrant holder has or will acquire a right or interest on exercise of the equity warrant

warrant holder means the holder of an equity warrant

warrant issuer means the issuer of an equity warrant; and includes the person who is required to deliver the underlying equity securities to the warrant holder on the exercise of the equity warrant.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Meaning of overseas offer document

In this notice, **overseas offer document**, in relation to an offer of equity warrants, means a document—

- (a) that contains an offer of equity warrants; and
- (b) that, with the exception of statements that are included in or that accompany the document under clause 9, is identical to a document that—

- (i) is lodged or registered under the law of a specified overseas jurisdiction, and that is signed by, or on behalf of, the persons (if any) required by that law to sign that document; or
- (ii) by virtue of an exemption or declaration by the relevant competent authority, is not required to be lodged or registered under the law of that specified overseas jurisdiction; and
- (c) by means of which it is lawful under the law of that specified overseas jurisdiction to make an offer of those equity warrants to the public; and
- (d) that contains no statement referring to a quotation or intended quotation on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange.

6 Exemption if there is registered prospectus

Every warrant issuer and every person acting on its behalf are exempted from sections 33(2) and (3) and 37A(2) of the Act and regulation 3 of the Regulations in respect of any equity warrants to which a registered prospectus relates.

7 Conditions of exemption in clause 6

The exemption in clause 6 is subject to the conditions that—

- (a) the issuer of the underlying equity securities is a company that is incorporated in New Zealand or in a specified overseas jurisdiction; and
- (b) the registered prospectus contains all applicable information, statements, certificates, and other matters specified in—
 - (i) clauses 14 and 15 of the First Schedule of the Regulations; and
 - (ii) clauses 1(1) to (3), 2 to 5, 7, 9, 11(b), 12, 33, 34, and 35(c) of the Second Schedule of the Regulations; and
- (c) the registered prospectus contains the matters specified in clauses 5A and 21 of the First Schedule of the Regulations that are relevant to the warrant holders; and
- (d) the registered prospectus states the recognised stock exchange on which the equity warrants are quoted or to which an application has been made for quotation; and

- (e) the registered prospectus includes the following information about the issuer of the underlying equity securities:
 - (i) the jurisdiction and place of incorporation of the issuer; and
 - (ii) the recognised stock exchange on which the issuer is listed, and on which the underlying equity securities are quoted; and
 - (iii) a statement that prospective investors should make their own enquiries regarding the issuer; and
- (f) if the registered prospectus states or implies that the equity warrants are covered equity warrants,—
 - (i) a trustee has been appointed and both the warrant issuer and the trustee have signed a trust deed relating to the equity warrants; and
 - (ii) the trustee holds a number of underlying equity securities (being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrants) throughout the period of the equity warrants and for the exclusive benefit of the warrant holders; and
 - (iii) the terms of the trust deed preclude the warrant issuer or any other person, except the trustee, from exercising control over the transfer or disposal of the underlying equity securities or having a charge over the assets of the trust; and
 - (iv) the registered prospectus contains a brief description of the principal terms of the trust deed, including the information specified in clause 13(1)(a), (b), (e), and (3) of the Second Schedule of the Regulations; and
- (g) the registered prospectus contains—
 - (i) a brief description of the principles and procedures used to calculate the subscription price for the equity warrants; and
 - (ii) a brief summary of the consequences of a lapse or expiry of an equity warrant, including the circumstances in which a lapse or expiry may occur; and

- (iii) a description of any formula for determining the amount payable in respect of equity warrants that have lapsed or expired; and
- (h) if the equity warrants are not covered equity warrants, the most recent audited financial statements of the warrant issuer that comply with the Financial Reporting Act 1993 are contained in or accompany every copy of the registered prospectus for the equity warrants; and
- (i) if the equity warrants are not covered equity warrants and are not quoted on the New Zealand Stock Exchange, the warrant issuer has, within 30 days of the most recent annual financial statements of the warrant issuer being released, sent to every warrant holder either a copy of those statements or a brief summary containing the information prescribed in clause 7 of the Second Schedule of the Regulations as if the equity warrants were debt securities; and
- (j) if the underlying equity securities are quoted on the New Zealand Stock Exchange, the registered prospectus contains a prominent statement that the issuer of the underlying equity securities is a company listed on the New Zealand Stock Exchange whose financial statements are expected to be readily available from the issuer, a member of that Stock Exchange, and the Registrar of Companies; and
- (k) if the underlying equity securities are not quoted on the New Zealand Stock Exchange, the registered prospectus contains the following prominent statements:
 - (i) that the underlying equity securities are not quoted on the New Zealand Stock Exchange and New Zealand resident investors may not have access to information concerning the issuer of the underlying equity securities or concerning the underlying equity securities in the same way as investors have in relation to an issuer of underlying equity securities quoted on the New Zealand Stock Exchange; and
 - (ii) that the financial reporting requirements applicable to the issuer of the underlying equity securities may be different from the New Zealand financial reporting requirements and the financial

statements may not be readily available to warrant holders; and

- (l) the warrant issuer has, within 5 working days of receiving each request of a warrant holder to do so, sent, or caused to be sent, without fee, to that warrant holder,—
 - (i) if the equity warrants are not covered equity warrants and are not quoted on the New Zealand Stock Exchange, a copy of the warrant issuer's most recent audited financial statements and interim financial statements; and
 - (ii) if any of the warrant issuer's obligations under the equity warrants is guaranteed by a third party, a copy of the guarantor's most recent financial statements that comply with the Financial Reporting Act 1993 (or any relevant overseas financial reporting requirements).

8 Exemption if there is overseas offer document

Every warrant issuer and every person acting on its behalf are exempted, in respect of any equity warrants to which an overseas offer document relates, from—

- (a) sections 33(2) and (3), 37, 37A(2), and 38A of the Act; and
- (b) regulations 11 to 18 and 21 to 23 of the Regulations.

9 Conditions of exemption in clause 8

- (1) The exemption in clause 8 is subject to the conditions that—
 - (a) there is an overseas offer document relating to the equity warrants at the time that offers of the equity warrants are made or are open for acceptance in New Zealand; and
 - (b) the overseas offer document contains no statement referring to quotation or intended quotation of the equity warrants on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
 - (c) the warrant issuer has, within 5 working days of receiving each request of a warrant holder or a prospective investor to do so, sent, or caused to be sent, without fee, to that warrant holder or prospective investor—
 - (i) a copy of the overseas offer document; and

- (ii) if the equity warrants are not covered equity warrants and are not quoted or about to be quoted on the New Zealand Stock Exchange, a copy of the most recent financial statements of the warrant issuer; and
 - (iii) if the performance by the warrant issuer of its obligations in regard to the equity warrants is guaranteed by a third party and a request has been made during the offer period, a copy of the guarantor's most recent financial statements that comply with the financial reporting requirements applying in the specified overseas jurisdiction; and
- (d) each of the warrant issuer and the issuer of the underlying equity securities is incorporated in New Zealand or in a specified overseas jurisdiction; and
- (e) the issuer of the underlying equity securities is listed, and the underlying equity securities are quoted, on a recognised stock exchange; and
- (f) the investment statement for the equity warrants—
 - (i) refers to the overseas offer document; and
 - (ii) states that allotments of the equity warrants will be made in the manner (which is specified in the overseas offer document) prescribed under the law of the specified overseas jurisdiction in which the overseas offer document is lodged or registered (or would be lodged or registered but for an exemption or declaration by a relevant competent authority under the law of the specified overseas jurisdiction concerned); and
 - (iii) specifies a telephone number, address, or website for the purpose of obtaining a copy of the overseas offer document, and states that any person to whom the equity warrants are offered may request a copy of the overseas offer document from the warrant issuer; and
 - (iv) contains no statement referring to quotation or intended quotation on the New Zealand Stock Exchange other than a statement approved by the New Zealand Stock Exchange; and

- (v) states that the documents referred to in clause 10 may be inspected at the office of the Registrar of Companies; and
- (vi) states that the tax position in New Zealand applying in relation to the equity warrants may be different from the position applying in a specified overseas jurisdiction, and that the investor should seek independent tax advice before subscribing for an equity warrant; and
- (vii) states that investing in the equity warrants may carry with it a currency exchange risk; and
- (viii) states that the financial reporting requirements applying in New Zealand and those applying to the warrant issuer may be different, and the financial statements of the warrant issuer may not be compatible in all respects with financial statements prepared in accordance with the financial reporting requirements contained in the Act and the Financial Reporting Act 1993; and
- (ix) states that any offer and allotment of equity warrants will be governed by the overseas offer document and will be made in accordance with the law of the specified overseas jurisdiction concerned; and
- (x) states that the warrant issuer may not be subject in all respects to New Zealand law; and
- (xi) states that the overseas offer document has not been registered in New Zealand under, and in accordance with, New Zealand law and may not contain all the information that a New Zealand registered prospectus containing an offer of equity warrants is required to contain; and
- (xii) states the general nature and effect of any exemption, order, or declaration that may have been granted by a relevant competent authority in respect of the offer of equity warrants; and
- (xiii) if the equity warrants are not quoted on the New Zealand Stock Exchange, states that New Zealand resident investors may not have access to information concerning the warrant issuer in the same way as investors have in relation to an

- issuer listed on the New Zealand Stock Exchange; and
- (xiv) if the underlying equity securities are not quoted on the New Zealand Stock Exchange, states that New Zealand resident investors may not have access to information concerning the underlying equity securities in the same way as investors have in relation to underlying equity securities that are quoted on the New Zealand Stock Exchange; and
 - (xv) refers to the overseas offer document wherever the Act or Regulations require an investment statement to refer to a registered prospectus; and
- (g) the investment statement for the equity warrants includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
- (i) that, in respect of a dispute concerning the contract for the equity warrants, the warrant issuer—
 - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) has instructed the New Zealand agent for service referred to in subparagraph (ii) to accept service of documents on its behalf; and
 - (C) agrees that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) the name and address of a person in New Zealand who has been appointed by the warrant issuer to accept service in New Zealand of any documents on its behalf; and
 - (iii) that, despite the statements referred to in subparagraph (i), the contract in respect of the equity warrants may not always be enforceable in New Zealand Courts; and
- (h) at the same time as offers of equity warrants are made or are open for acceptance in New Zealand, offers of the equity warrants are also made or are also open for

- acceptance in the specified overseas jurisdiction concerned in accordance with the law of that jurisdiction; and
- (i) if the overseas offer document states or implies that the equity warrants to which it relates are covered equity warrants,—
 - (i) either of the following circumstances applies:
 - (A) in the case of an equity warrant that is a fully covered warrant that complies with the fully covered warrant requirements of the Australian Stock Exchange, the warrant issuer has complied, and continues to comply, with those requirements; or
 - (B) in any other case, a trustee has been appointed in respect of the equity warrants and is required to hold, for the exclusive benefit of the warrant holders and throughout the period of the equity warrants, a number of underlying equity securities, being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrants; and
 - (ii) the overseas offer document or the investment statement for the equity warrants contains a brief description of—
 - (A) the principal terms of the trust deed, or analogous document, including the information specified in clause 13(1)(a), (b), (e), and (3) of the Second Schedule of the Regulations; and
 - (B) the cover arrangement; and
 - (j) if the warrant issuer is not listed on a recognised stock exchange, the warrant issuer must continue to meet all the terms of its approval to be a warrant issuer (as set by the recognised stock exchange) during any period in which equity warrants are offered to the public.
- (2) Clause 8(b) applies in respect of an overseas offer document only, and not in respect of any investment statement or other advertisement.

10 Documents to be received by Registrar of Companies

The exemption in clause 8 is subject to the further condition that the Registrar of Companies has received a copy of each of the following documents:

- (a) the overseas offer document referred to in clause 9(1)(a); and
- (b) the certificate of incorporation of the warrant issuer; and
- (c) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the warrant issuer; and
- (d) any material contract referred to in the overseas offer document, or,—
 - (i) if the contract is not in writing, a copy of any memorandum containing particulars of the contract; or
 - (ii) if an exemption or declaration has been granted by a relevant competent authority under the law of the specified overseas jurisdiction concerned, a copy of any memorandum containing particulars of the material contract prepared under that exemption or declaration; and
- (e) any trust deed relating to covered equity warrants; and
- (f) any certificate or other document evidencing lodgement or registration of the document with the relevant competent authority or evidencing any exemption or declaration by the relevant competent authority referred to in clause 5(b)(ii).

11 Exemption for audiovisual advertisements

Every warrant issuer and every person acting on its behalf are exempted from regulations 11(a) and (b) and 14(1) of the Regulations in the case of any audiovisual advertisement.

cl 4(1)

Schedule 1
Recognised stock exchanges

New Zealand Stock Exchange
Australian Stock Exchange

cl 4(1)

Schedule 2
Specified overseas jurisdictions

Australia
England
Wales
Scotland
Northern Ireland
Germany

Dated at Wellington this 27th day of September 2002.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

L. A. J. Kavanagh,
Member.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on 1 October 2002 and expires on 30 September 2007. It replaces the Securities Act (Equity Warrant Issuers) Exemption Notice 1997. The provisions of that notice have been carried forward with no change of substance, except that—

- the definition of audiovisual advertisement has been amended; and
- the investment statement for equity warrants offered under an overseas offer document must contain an agreement in terms

of which the warrant issuer submits to the jurisdiction of the New Zealand courts.

In addition, certain drafting changes have been made to reflect current drafting practice.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 2002.
This notice is administered in the Securities Commission.
